The Solicitors' Journal

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EDITORIAL

LETTERS appearing recently in our correspondence columns have referred to two new organisations which might be set up by solicitors with a view to preserving their legitimate interests. The first is a Solicitors' Stock Exchange and the second a Solicitors' Executor and Trustee Company.

It would not be the first time that the solicitors' profession, dissatisfied with the service already provided in some matter vital to its own interests or those of its clients, has decided to sponsor an organisation of its own to make good the deficiency. The Law Fire Insurance Society, Ltd., the Solicitors' Law Stationery Society, Ltd., and even this journal itself, all, in some measure, trace their origin to this cause. The merits of the two latest proposals obviously deserve the fullest consideration before a judgment upon them can be pronounced.

The suggestion for a Solicitors' Stock Exchange is inspired by the decision of the Stock Exchange Committee to suspend the present arrangement for sharing commission with solicitors. Supporters of the scheme feel that clients will still expect their solicitors to help and advise them in connection with their investments, for the solicitor's position as the clients' "man of business" is firmly established. As from the end of 1948, the solicitor will either do this work for nothing or will have to charge a fee which will be payable by the client in addition to his broker's commission. Many solicitors are keen followers of the stock market and feel, with some justification, that they are quite competent to advise clients on the selection of investments. Hence the proposal that the stockbroker be excluded and that some method be devised whereby these transactions be negotiated directly between the solicitors acting for buyer and seller respectively.

There are strong arguments against this proposal. No one knows better than the lawyer how much skill and experience are often called for in a transaction which appears to the uninitiated to be simplicity itself. To the layman the drafting of a lease appears to be no more than copying a precedent out of a book, and the making of a will is often entrusted to persons singularly ill-equipped for the task. It ill becomes those who complain of encroachment in their own province to adopt the same tactics in regard to the profession of another and although this Journal feels that the decision of the Stock Exchange Committee will prove to be detrimental to broker, solicitor and client alike it cannot lend its support to the setting up of a rival organisation designed to do the broker's work without the broker's experience.

The suggestion for a Solicitors' Executor and Trustee Company is more difficult to comprehend and was considered impracticable at The Law Society's Provincial Meeting in 1937. There is no doubt that banks are encouraging their customers to treat the bank manager as a general business adviser and some of their Press advertisements are, in themselves, evidence of this—but there are instances still occurring of a bank manager attempting to do work which can be regarded as peculiarly within the province of the solicitor.

This matter was taken up by The Law Society with one or more of the principal banks in 1937, and an assurance was obtained that examples of improper encroachment by a bank manager would be dealt with if reported through the Society to the bank concerned (81 SOL. J. 325, 353). The executor and trustee departments of the principal banks set out to undertake the work which would otherwise fall on the lay client when acting in either of those capacities. In the main they employ the family solicitor to do the legal work involved, but being better equipped than the normal lay client in these matters they are able to attend to a substantial number of questions which would otherwise be dealt with by the solicitor acting for the executors or trustees, and the solicitor suffers accordingly.

Accepting, however, that the banks and insurance companies when acting as executors or trustees do take work away from solicitors, it is difficult to see how the creation of yet another trust corporation will alleviate this. It can only do so by giving the estate solicitor more generous treatment than that afforded by the other competing corporations and it obviously must not do this at the expense of the client. Whether it is really practicable to allow the corporation to do less, and the solicitor acting for the executors or trustees to do more, of the work which has to be done is a subject on which our readers may have their own views.

1 LAW LIBRARY

CURRENT TOPICS

The Brighton Provincial Meeting

MEMBERS of The Law Society will have received details of the provisional programme for the Brighton Meeting of the Society to be held from the 21st to the 23rd September, and those who attended the Provincial Meetings before the war will be interested to see the changes to be made this year. The time previously devoted to the reading of papers by members of the Society is to be devoted to sectional discussions of the work of the principal committees of the council under their respective chairmen. Another innovation is an address on a subject—not yet revealed—of interest not only to members but to the ladies accompanying them. This will be followed by a summing up of the sectional discussions by the chairmen of committees. A special feature of the week is an address to be given by Sir Malcolm Trustram Eve, K.C., on the work of the Central Land Board. Members of the Society will, we feel sure, welcome the opportunity that this meeting will provide of taking an active and constructive part in the conduct of its affairs.

Change of Name and Adultery

IT appears that there is no prospect of legislation being introduced to put difficulties in the way of persons changing their surnames. Dr. FISHER, Archbishop of Canterbury, reported on 27th May to the Upper House of the Convocation of Canterbury that a motion was recently passed in the Lower House regretting the ease with which, without check, any person could change a surname at will, which in some cases led to serious moral complications. The LORD CHANCELLOR had written that he could understand that this facility to change the surname might be used to ease the path of a transgressor, but he would be reluctant to introduce legislation to make it more difficult for people to do that which they had been doing for centuries. Dr. Fisher said that there was, therefore, no prospect of legislation at present, and no action could be taken. Practitioners in the divorce and summary matrimonial courts are aware of the problem. It is becoming more and more common for a woman living in adultery to assume the name of the wife of the man with whom she is living. There are obvious difficulties in and objections to limiting the legal change of name, but this particular evil, with all the moral and legal complications which ensue, is deserving of the special attention of the Legislature.

Measures for Expedition in the Land Registry

THE report on the work of the Land Registry, 1939–1948, contains an account of the successful measures undertaken to safeguard documents and the register during the war. Not a single document was lost, nor were any registers or land or charge certificates in the Registry damaged or destroyed when the building was bombed in October, 1940, although a number of certificates were destroyed by enemy action when in the custody of solicitors or their clients, and were replaced on request at a nominal fee of one guinea, except where the work involved was very great. With regard to delays in the Registry, the report states that special expedition of registrations has been arranged where it can be shown that undue hardship or loss would otherwise be caused. A special fee, normally of one guinea, is charged for this service. In 1946 less than 2,000 cases were expedited, and in 1947 the number was 3,779. The Land Transfer Committee reported in 1943 that personal searches are unnecessary and undesirable, and the present report refers to the advantages of obtaining office copies of the register, at a cost of 1s. 6d. per title, which enable registered proprietors to comply with s. 110 of the Land Registration Act, 1925, so that the purchaser can then obtain a certificate of search without any fee. Personal searches have been reduced in number since 1938 (41,993 to 40,322), and office copies issued have been increased (6,291 to 24,602), but it is clear that further improvement is necessary. The cost per transaction is now 16s. 7d. as against 17s. 3d. before the war.

The Forces and Legal Aid

CIVILIAN solicitors, says The Law Society's 1947 report on Poor Persons Procedure, have replaced naval officers in charge of the legal aid schemes at Chatham, Devonport, Portsmouth and Rosyth. The reduction in the volume of work is illustrated by the fact that at Devonport the number of applications was 488 in 1947 as against 1,478 in 1946 and 2,247 in 1945. Matrimonial cases amounted to about 65 per cent. of the total. In the Home Commands of the Army the number of cases was 12,478 as against 32,361 in 1946. About 71 per cent. of the cases were matrimonial, the remainder being mainly tenancy and personal injuries problems. The shrinkage in the Armed Forces has reduced the number of suitable recruits for the legal aid sections, the most satisfactory at present being those who have recently left school without office experience, and intending to be articled after their periods of service. The Civilian Practitioners Plan, which was introduced in 1946, did much to alleviate the difficulties in Home Commands. By the end of 1947 a total of 3,516 cases had been completed by solicitors in general practice and there were a further 388 cases still in the hands of practitioners on the panel. The report further states that by the end of September, 1947, it was possible to allocate a case to a solicitor of the Services Divorce Department within a week of the poor persons' certificate being granted. Civilian cases assigned to the conducting solicitors of the Services Divorce Department increased from 734 in 1946 to 2,585 in 1947. The report also contains an interesting account of the work of the American Divorce Department, which was set up in April, 1947, at the request of the Government, to assist British wives of American servicemen and ex-servicemen.

Working Directors and the Investment Levy

THE harshness of the new proposed investment levy may be mitigated in one direction if a new schedule to the Finance Bill, tabled by the CHANCELLOR, is passed into law. It relates to working directors of private companies not being investment companies, whose investment income consists of income from the share capital of the company. Such income is to be treated as investment income, it is proposed, only so far as it exceeds the greater of two specified amounts, reduced by the amount of emoluments as a working director. The amounts are (A) £2,000, or (B) £15,000 or 15 per cent. of the profits of the company, whichever is the less, divided by the number of persons who are working directors of the company. The relief is reminiscent of the reliefs granted to working directors under the Excess Profits tax, and no doubt all the decisions of the courts on the definitions of "working director" under provisions relating to that tax will prove to be of use when the new schedule becomes law. Evasion by nominating bogus working directors to a board will, no doubt, be as difficult as ever, but on the other hand much needed relief will be given to *bona fide* directors who, like others with formerly high incomes, only draw a fraction of their nominal salaries owing to the high rates of income tax and sur-tax.

Recent Decision

In a case on 27th May (*The Times*, 28th May) the Divisional Court (the LORD CHIEF JUSTICE and BIRKETT and SELLERS, JJ.) allowed an appeal against a conviction for letting premises at an extortionate rent contrary to s. 10 of the Increase of Rent and Mortgage Interest Restrictions Act, 1920. The court held, following *Neale* v. *Del Soto* [1945] K.B. 144, that where a landlord let separate rooms in a house to two tenants, on the terms that they shared with each other the use of the kitchen, the lettings were not lettings of separate dwellings within the Act, and therefore the landlord could not be guilty of an infringement of the Act.

ACTIONS AGAINST PUBLIC AUTHORITIES

In an action "brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority," the plaintiff is under two disadvantages compared with the ordinary litigant; his action must be commenced within the special period of limitation provided (now twelve months); and should it fail, the defendant is entitled to have his costs taxed not on a party and party, but on a solicitor and client, basis. When this provision of the Public Authorities Protection Act, 1893, was re-enacted by s. 21 of the Limitation Act, 1939, no attempt was made to give greater precision to the language used.

Though the section speaks of "any person," it has long been settled law that the protection is confined to persons who can properly claim to be "public authorities," and the cases have settled a tolerably clear line to limit the definition of those words. But when one looks for some guide by which to determine the question whether a particular act or default is of the kind protected, the authorities give little help. The words of Lord Haldane in *Bradford Corporation* v. *Myers* [1916] A.C. 242 show clearly whence the difficulties arise.

"It is one thing," he said, "to say that it is the duty of a court of construction to endeavour to give a meaning to every word used in the document, and quite another to say that this can always be done, or that a clear principle or purpose can always be determined by exegesis. It is often obvious from the words he has employed that the draftsman has had instructions which have been too vague and insufficient to admit of the expression of a comprehensive principle with exactness, or at all. In such a case the court can only take the particular facts in the case before it and decide as best it can whether they come within the words, or whether they fall altogether outside them."

Having referred to the section, he continued: "My lords, in the case of such a restriction of ordinary rights I think that the words used must not have more read into them than they express or of necessity imply, and I do not think that they can be properly extended so as to embrace an act which is not done in direct pursuance of the provisions of the statute or in the direct execution of the duty or authority. What causes of action fall within these categories it may be very difficult to say abstractly or exhaustively. It is hardly easier to define *a priori* the meaning of being done directly than it is to define the number of grains that will make a heap. But just as it is not difficult to tell a heap when it is seen, so it may be easy at least to say of certain acts that they are not the immediate and necessary outcome of duty or authority in a particular case."

This negative approach to the problem has been criticised both in the same and in later cases, and for all the litigation that has turned on the point we are no nearer to-day than in 1916 to finding any clear statement in positive terms of the scope of the words of the section which has met with any wide measure of judicial acceptance.

On the one hand, *Myers'* case establishes that it is not every act which a public authority may do in the exercise of its powers which is entitled to protection. On the other hand, it is by no means necessary to show that the public authority was doing something which, by statute or at common law, it was under a binding obligation to do. If *Myers'* case has ever been thought to be an authority to the contrary, that interpretation has now been firmly repudiated (*Griffiths* v. *Smith* [1941] A.C. 170; *Western India Match Co., Ltd.* v. *Lock* [1946] K.B. 601). Between these two stepping stones the conflict of judicial *dicta* is highly confusing.

In *Griffiths* v. *Smith*, *supra*, Lord Simon adopted with approval a test suggested by the Master of the Rolls in the Court of Appeal. To come within the protection of the section the public authority must, when the cause of action arose, have been "doing something incidental to or part of" some larger process which they were under an obligation to undertake. The word "incidental" is in itself a difficult one, and was itself used in a different sense by Lord Maugham in the same case, when he said: "It is sufficient to establish that the act was in substance done in the course of exercising for the benefit of the public an authority or a power conferred on the public authority, not being a mere incidental power, such as a power to carry on a trade." But such difficulties of language are not in themselves insurmountable. The question in *Griffiths'* case was whether the managers of a non-provided school, admittedly a public authority and admittedly acting in the exercise of a public duty or authority in the discharge of their general functions of management, could claim the protection of the section in respect of an accident occurring on the school premises to parents who were invited there by the managers to see an exhibition of the children's work. The House of Lords upheld the managers' claim to the protection of the section, and at least a substantial element in the *ratio decidendi* was the consideration that the managers, in inviting the parents to the school exhibition, were acting in the interests of the general success and prosperity of the school. The question whether particular acts are "incidental to, or part of" some larger function which a public authority is obliged to discharge seems to depend upon whether they are reasonably necessary to the efficient and advantageous discharge of the larger function.

But this attractive test certainly does not go all the way to solve the problem. In *Myers'* case it was strongly argued that a public authority, compelled by statute to act as suppliers of gas, were entitled to the protection of the section for anything done in the "incidental" process of selling coke to a member of the public, for the very reason that, coke being the inevitable by-product of gas production, the public authority were only doing what was best for the economical discharge of their main function if they disposed of the coke by sale. The argument did not prevail.

Another test suggested by *Myers'* case turns upon the question whether the public authority are acting in discharge of a merely contractual obligation. This is not, of course, to suggest that the problem can be solved by asking simply whether the nature of the action be contractual or tortious. But if the public authority, doing something within the general scope of authorised acts, is nevertheless doing it in a particular way only because it has engaged by private contract to do it in that way, then any neglect or default, whether it be a breach of the contract or a tort to some third party, lies outside the protection of the section. But this test can lay no better claim to being conclusive than can the "incidental" test; indeed, preference for the latter seems implicit in the decision in *Western India Match Co., Ltd.* v. *Lock* [1946] 1 K.B. 601.

The truth is that the general current of decisions since 1916, whilst never failing to defer to the authority of *Bradford Corporation* v. *Myers*, has nevertheless been continually narrowing the margin within which the principle upon which that case proceeded can still be applied. A striking case, apart from those already cited, was *Clarke* v. *Bethnal Green Borough Council* [1939] 2 All E.R. 54, an action brought against a public authority in respect of an accident at a public swimming bath which they were by statute empowered, but not obliged, to provide. Oliver, J., had no doubt that "the erection of a public bath for the use of people who, very likely, are unable to get proper means of washing and bathing in their own homes is an act done in pursuance of a public duty or authority." It is difficult to reconcile this with the previous decision in *Hawkes* v. *Torquay Corporation* [1938] 4 All E.R. 16, where the facts apparently differed only in this respect, that the accident occurred at a public entertainment pavilion instead of a public swimming bath. It may be a more laudable endeavour to provide baths for the Bethnal Green householder than to entertain the Torquay holiday-maker, but that consideration is scarcely material.

In *Griffiths* v. *Smith* Lord Maugham had occasion to point out that on the facts of *Myers'* case the House of Lords could not have allowed the corporation's claim to prevail without

admitting the principle that all *intra vires* acts of a public authority are entitled to protection; and Lord Wright made the illuminating comment that "much turned in that case on the sharp antithesis of two operations, the one to supply gas, which was obligatory on the corporation, and the other to sell coke, which was optional. This made it easier to dissever the two operations, though in one sense both might be regarded as falling within the general idea of a gas company's undertaking which necessarily involved not merely the making and supply of gas, but the disposal of coke and other residual products."

Both in *Hawkes* v. *Torquay Corporation*, *supra*, and in *Hartin* v. *London County Council* (1929), 141 L.T. 120, justification for decisions which, following *Myers'* case, resolutely excluded from the section certain *intra vires* acts of a public authority, has only been found by relying, or apparently relying, on the proposition that only those acts are protected which the public authority is under a legal obligation to do. As already indicated, it is now clear beyond doubt that that proposition can no longer be supported.

Lord Haldane seems to have overestimated the capacity of his successors on the bench to "tell a heap when it is seen."

N. C. B.

Company Law and Practice

MINORITY SHAREHOLDINGS IN PRIVATE COMPANIES

THE problem of minority shareholdings is one that should be of general interest to practitioners, especially as the effect of the new Companies Act on this point is not entirely clear and will depend upon future decisions of the court. The new provisions especially directed to this problem are contained in the Companies Act, 1947, ss. 9 and 90; and it should be observed that these sections should be read in conjunction with one another. (These sections correspond with cll. 210 and 225 of the Consolidating Bill.) For the purposes of this article I omit the provisions of the new Act with regard to the rights of minorities in the alteration of a memorandum of association, in the variation of class rights and with regard to an application to the Board of Trade to appoint an inspector.

These provisions are substantially based on the recommendations of the Cohen Committee, which directed its main attention on this subject towards private companies. The kinds of problem envisaged by the Cohen Committee were the restriction of the transfer of shares where hardship is caused, especially where the legal personal representatives of minority shareholders have to raise money to pay estate duties (see *Re Cuthbert Cooper & Sons* [1937] Ch. 392) and also the excessive remuneration of directors at the expense of the minority shareholders. But these are only two instances of the innumerable problems which can arise.

Any attempt at legislation to protect the minority shareholders is fraught with difficulty, and that the Cohen Committee was fully aware of this can be seen from the following passage: "It is impossible to frame a recommendation to cover every case. We consider that a step in the right direction would be to enlarge the power of the court to make a winding-up order by providing that the power shall be exercisable notwithstanding the existence of an alternative remedy. In many cases, however, the winding up of the company will not benefit the minority shareholders since the break-up value of the assets may be small or the only available purchaser may be that very majority whose oppression has driven the minority to seek redress. We, therefore, suggest that the court should have, in addition, the power to impose upon the parties to a dispute whatever settlement the court considers just and equitable. This discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases. We do not think that the court can be expected in every case to find and impose a solution, but our proposal will give the court a jurisdiction which it at present lacks and thereby at least empower it to impose a solution in those cases where one exists."

Sections 9 and 90 *prima facie* give the court a wide power to intervene in the internal affairs of a company—a power far wider than that which has existed hitherto. By these sections the court now has a two-fold discretion. It must decide first of all whether a particular petition which comes before it is one on which it can take action, and in this its discretion is circumscribed by the provisions of s. 9; and then secondly, it must decide what measures it will apply—in the latter instance its discretion would appear to be unfettered.

In order to invoke the benefit of these provisions the petitioner must establish (*a*) that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself); (*b*) that a position exists which would justify a compulsory winding-up order under the Companies Act, 1929, s. 168 (6), on the grounds that it is just and equitable. It will be noted that for the petitioner to succeed his petiton must establish both (*a*) and (*b*) and not merely one of them. With regard to (*a*) s. 9 does not attempt to define "oppression," and in view of the well-established principle that the court in the absence of *mala fides* is reluctant to interfere in the internal affairs of a company, it is probable that "oppression" will not be given a wider interpretation than in the past. As to (*b*), up to the present time it has not been the general practice of the court to grant a winding-up order on the grounds that it is just and equitable unless actual deadlock has supervened, but see *Re Davis & Collett, Ltd.* [1935] Ch. 693, and compare *Re Yenidje Tobacco Company* [1916] 2 Ch. 426 and *Lock* v. *John Blackwood* [1924] A.C. 783. This rather narrow interpretation has no doubt to a large extent been due to the fact that in the past the court has had to choose between granting a winding-up order or dismissing the petition; and it is well known that the court is reluctant to grant a winding-up order if there is any reasonable alternative. It may well be that, now that s. 9 provides a practical alternative to winding up by extending the jurisdiction of the court to make a general order, there will be a tendency to give the words "just and equitable" a more liberal interpretation, and s. 90 confirms this view.

Section 9 gives the court jurisdiction to make any order "as it thinks fit." This is in accordance with the recommendations of the Cohen Committee, but the section goes further than this and perhaps gives some indication of the kind of order that the court is likely to make: "for regulating the conduct of the company's affairs in future, or for the purchase of the shares of *any* members of the company by other members of the company or by the company, and, in case of a purchase by the company, for the reduction accordingly of the company's capital or otherwise."

This means in substance that the court (*inter alia*) can make any alteration or addition it pleases to the memorandum or articles of association of a company, and s. 9 goes on to provide that none of the alterations or additions made by the court can be altered by the company without the leave of the court. It also means that the court has wide powers to order the compulsory purchase of the share of any member or members (not necessarily the petitioner).

There also arise from s. 9 two interesting points of procedure, namely, (1) when the court makes an order for the compulsory purchase of its shares by the company it is not clear whether the court will require the whole reduction procedure as under the 1929 Act, and (2) where the court orders the compulsory purchase of shares there is no express procedure provided for the valuation of such shares. It remains to be seen what the court will decide on these two points.

In general these new provisions appear to give the court very wide powers to intervene in the internal affairs of a company when a minority shareholder (or shareholders) claims to be oppressed. It is, of course, unwise to attempt to predict in what way the court will interpret these sections; but they will give the court an opportunity to deal effectively with a large number of disputes in private companies which have hitherto had to remain unsolved or which have led to deadlock and the consequent winding up of the companies concerned.

S.

A Conveyancer's Diary

SALES BY RECEIVERS

A DEBENTURE in the common form usually provides that a receiver appointed by the debenture-holder shall be the agent of the company, and shall have power to sell or to concur in the sale of the premises comprised in the debenture. No difficulties arise in regard to the receiver's title if he sells under a debenture in this form, provided it is shown that the company has not gone into liquidation at the date of the sale. The only inquiries of substance in such a case relate to the circumstances of the receiver's appointment. The matter assumes a totally different complexion if the debenture does not appoint the receiver the agent of the company, for it is then a question of construction of the debenture whether the receiver is the agent of the company or of the debenture-holder. This is not an easy question to determine, especially when the relevant provisions of the Law of Property Act, 1925, are incorporated with modifications in the debenture: compare, for example, the decision in *Deyes* v. *Wood* [1911] 1 K.B. 806, with that in *Cully* v. *Parsons* [1923] 2 Ch. 512. In my opinion, on the investigation of title, the only safe course is to assume that, in the absence of an express provision in the debenture itself, the receiver is acting as the agent of the debenture-holder; and on that footing it becomes essential to secure the concurrence of the company to a sale by the receiver. It is convenient to ask for a sight of the debenture before contract, if possible, in the case of a purchase from a receiver; if that is obtained, there is no difficulty in providing in the contract for any necessary concurrence. If that cannot be obtained for any reason, the title should be refused. My experience is that questions of this kind are usually discussed in a more amicable spirit before contract than after, but, of course, that is not always possible. In the case of a receiver's sale forming a link in the title, if the receiver did not sell as the express agent of the company and it is impossible to obtain some satisfactory assurance from the company *ex post facto*, this circumstance would, in my view, constitute a flaw with the usual consequences. The fact that the realisation of property secured by a debenture is often the prelude to the company's going into liquidation may well make it difficult to cure any defect of this nature after a lapse of time.

The circumstance that the company goes into liquidation before or after the appointment of a receiver puts the problem on to another footing. If the appointment precedes the liquidation, the receiver ceases to be the agent of the company immediately after the liquidation (*Gosling* v. *Gaskell* [1897] A.C. 575), and thereupon, in the absence of some provision in the debenture, he is to be regarded, apparently, as the agent neither of the company nor of the debenture-holder. *Gosling* v. *Gaskell* was a case where a compulsory order for winding up was made, but on principle it would seem that the same result would flow from a voluntary liquidation. Any express provision in the debenture appointing the receiver agent of the company is consequently no safeguard for the purchaser, who can only accept the receiver's title if the liquidator concurs in the sale. *A fortiori* the liquidator's concurrence is necessary if the receiver is appointed after the company goes into liquidation, for in such a case, notwithstanding any provision as to agency in the debenture, the receiver can never become the agent of the company. This emerges clearly from *Re Northern Garage, Ltd.* [1946] Ch. 188, a decision in circumstances of a peculiar character.

The sequence of events was as follows: (1) an order for the winding up of the company; (2) a successful application by the debenture-holder under the Courts (Emergency Powers) Acts for leave to appoint a receiver; (3) the appointment of a receiver, and (4) contract by the receiver to sell certain property subject to the charge. The purchaser objected to the receiver's title, and asked that the receiver should obtain (*a*) the concurrence of the liquidator to the sale; and (*b*) an order under the Courts (Emergency Powers) Acts, authorising the receiver to realise the security. The application for leave to appoint a receiver made under these Acts had been made in the presence of the liquidator, and the debenture provided that the receiver should be the agent of the company for the purposes of a sale. Vaisey, J., held that as the liquidator had been present at the application for leave to appoint a receiver, and had made no objection thereto, the order empowering the debenture-holder to appoint a receiver must be read as an order empowering him to appoint a receiver according to the terms of the debenture, i.e., a receiver who was to be the agent of the company, notwithstanding the fact that it was in liquidation. No further leave under the Courts (Emergency Powers) Acts was therefore necessary to enable the receiver, acting as such agent, to realise the security. Broadly speaking, the concurrence of the liquidator was inferred from his silence so as to cure the apparent defect in the receiver's title; but it should be noted that the liquidator's silence was on a formal application to the court, a circumstance that invested it with a significance which may not attach, for example, to mere failure to take action when notified of some impending step towards the realisation of the security.

It was suggested that as an order for winding-up had been made before the appointment of the receiver, the appointment itself might be invalid on the ground that the debenture conferred no power to appoint a receiver on any footing except that the receiver, when appointed, should be the agent of the company. This suggestion was rejected and, in my respectful submission, very properly rejected. The functions of a receiver are not confined to sales, and if he cannot be treated as the agent of the company for the purpose of a sale, he can still exercise some control over the company's assets for the benefit of the debenture-holder without obtaining the status of an agent of the company. Any other decision on this point would mean that a company could neutralise the debenture-holder's remedy of appointing a receiver by going into liquidation.

It is apparent from this decision that if, in similar circumstances, an application is made for leave to appoint a receiver and it is not shown whether the application was granted in the presence of the liquidator, a purchaser must inquire whether the liquidator took any formal steps to recognise the appointment. It is an open question whether making the liquidator respondent to an application under the Courts (Emergency Powers) Acts is sufficient for this purpose if the liquidator does not appear; it is arguable that such would be the case, since one of the main objects of an appointment is usually an eventual realisation of the security, and this object may be regarded as having been in the contemplation of the parties at the time of the application. But Vaisey, J. (without having to decide the point), appears to have indicated a contrary opinion (*Re Northern Garage, Ltd.*, *supra*, at p. 193). Every case must rest on its own facts, but I would advise against accepting a title unless the receiver's position *qua* agent of the company is clear, and founded on abundant evidence.

At the present time the realisation of any security must be preceded by an application under the Courts (Emergency Powers) Act, 1943, and in certain circumstances by two such

applications. Leave to exercise any remedy by way of the appointment of a receiver must, in any case, be applied for under s. 1 (2) (*a*) (iii) of the Act as a preliminary step to the appointment of a receiver. Assuming that the debenture contains the usual clause whereby a receiver is to act as the company's agent, the question whether any further application must be made depends on the factors already discussed, viz., whether the company was in liquidation at the date of the appointment, or has subsequently gone into liquidation, or not. If the company has gone into liquidation, the receiver in realising the security acts on behalf of the debenture-holder alone, and must obtain leave to realise the security under s. 1 (2) (*a*) (v): *Re S. Brown & Son, Ltd.* [1940] Ch. 961. If, on the other hand, the company has not gone into liquidation, the receiver acts as the agent of the company, and in realising the security he is not "proceeding to exercise any remedy available to him" within the meaning of s. 1 (2) of the Act; he is merely selling property belonging to his principal which, as a duly authorised agent, he is at liberty to do—*Re Wood's Application* [1941] Ch. 112. This is, perhaps, a lacuna in the Act, and it is now the practice of the court to fill it to some extent by ordering that leave to appoint a receiver should be subject to a restriction, whereby the receiver is not permitted to realise the security without a further application to the court. Whether such a restriction is imposed or not depends on the circumstances, and if it is the intention to sell the property as soon as possible after the appointment of a receiver, evidence to that effect should be produced on the application for leave to appoint. This may save a second application at a later stage. "A B C"

Landlord and Tenant Notebook

FIXED EQUIPMENT ON FARMS

GREAT importance is attached, by the Agriculture Act, 1947, to the provision and upkeep of "fixed equipment" on agricultural holdings; and while the main purpose of this article is to examine the new rights and liabilities which the statute confers and imposes on the parties to a tenancy agreement, I think that these will be more readily understood if reference be first made, not only to the definition of "fixed equipment" but to provisions other than those contained in Pt. III, the Part which concerns tenancies.

By s. 109 (3) a meaning is assigned to the expression by which it *includes* "any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity." Thus, many things which would not ordinarily be called the equipment of a farm are covered; and I think the clue is that the Act as a whole looks upon agricultural holdings as food manufactories, so that anything designed to promote the production of food is in a position analogous to that of the works and plant of an industrial undertaking. Consistently with this, the provision, improvement, maintenance and repair of fixed equipment are important factors in determining whether an owner's management is good estate management (s. 10 (1) and (2)); and, by parity of reasoning, the extent to which the necessary work of maintenance and repair is carried out is a factor in determining whether an occupier is fulfilling his responsibilities to farm in accordance with the rules of good husbandry (s. 11 (1) and (2) (*f*)). But, in the case of an occupier who is not owner, these responsibilities are not to include an obligation to carry out any work of maintenance or repair which the owner is under an obligation to carry out in order to fulfil his responsibilities to manage in accordance with the rules of good estate management (s. 11 (3)). Sections 10 and 11 are in Pt. II, which is concerned with good estate management and good husbandry in general, not with the relationship of landlord and tenant; but s. 11 (3) of course shows how the terms of that relationship may play a part in settling questions on the answers to which the issuing of supervision or even dispossession orders may depend. Again, when we examine the provisions dealing with directions to secure good estate management and good husbandry (ss. 14 and 15) we find some express references to fixed equipment, e.g., in s. 14 (3) (direction to provide or improve or maintain or repair, though no supervision order in force), while the whole of s. 15 is concerned with the right to make representations and the right of appeal when a proposal to give a direction *to provide* fixed equipment is made.

Coming now to the rights and duties of landlords and tenants, s. 37 authorised the Minister (of Agriculture and Fisheries) to make regulations "prescribing terms as to the maintenance, repair and insurance of fixed equipment which shall be deemed to be incorporated in every contract of tenancy of a holding, whether made before or after the commencement of this Part of this Act, *except* in so far as they would impose on one of the parties to an *agreement in writing* a liability which under the agreement is imposed on the other." Which the Minister did; and the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948 (S.I. 1948 No. 184) came into force with Pt. III of the Act on 1st March, 1948. Before going into them, mention may be made of the fact that the rest of the section provides for variation by arbitration of written agreements (made before or after the coming into force) which effect "substantial modifications" in the operation of the regulations in the light of whether those modifications are "justifiable." Also of s. 38, mainly concerned with the right to a written agreement where there is none or where there is one which does not make provision for a number of matters set out in Sched. VI, which include "in respect of all work of maintenance and repair of fixed equipment comprised in the holding, a covenant by one or other of the parties to carry out the work" and "a covenant by the landlord in the event of damage by fire to any building . . . to reinstate or replace the building if its reinstatement or replacement is required for the fulfilment of his responsibilities to manage the holding in accordance with the rules of good estate management, and . . . a covenant by the landlord to insure all such buildings against damage by fire."

Sooner or later, then, tenancies of farms are likely to contain provisions identical with or "in conformity with" (the words are from s. 37 (2)) those of the model code of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948. The Regulations, made "after consultation with such bodies as appeared to the Minister to represent the interests of landlords and tenants of holdings" (s. 37 (1)) on 24th February last, and laid before Parliament the following day, reflect the spirit of the legislation as described earlier in this article. The Minister was not enjoined to consult with conveyancers, and the resultant code contains an astonishing amount of detail and elaboration but approaches matters from the point of view of efficiency of instruments rather from that of the interest of those who wield them. I do not suggest that this is, in the circumstances, a blemish, or that the regulations are unworkable; but those who expect to find the obligations of the respective parties neatly divided into two sets of covenants will be disappointed. The code consists of three parts, entitled "Rights and Liabilities of the Landlord," "Rights and Liabilities of the Tenant," and "General Proviso." Thus, anyone who has to advise a landlord or tenant on his position may have to read the whole thing carefully. It is, however, the case that Pt. I is concerned mostly with liabilities of the landlord, Pt. II mostly with liabilities of the tenant; but each confers rights, and I think that the most practical suggestion which I can make

to anyone who wishes to approach the code from a conveyancing point of view is to take a coloured pencil and underline, in each part, words which either qualify a liability or create a right (the "General Proviso" permits of the parties agreeing in writing to exclude obsolete equipment, and itself excludes liability for work rendered impossible, except at prohibitive or unreasonable expense, by subsidence of land or blocking of outfalls not under the control of either party). Of the elaborate and painstaking consideration paid to such matters as locks and fastenings, eaves-guttering, grease-traps, cracked slates and the like, and to such processes as gas-tarring and limewashing, which seldom, if at all, figure in known precedents, I do not propose to say much; but a few observations on the operation of some of the provisions may be useful.

It is, perhaps, strange, in view of the time that it took to decide whether notice to a landlord under a statutory obligation to repair by virtue of the Housing Act was a condition precedent to his liability (see *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.); but note that the point was reserved in *Summers* v. *Salford Corporation* [1943] A.C. 283), that the position in the case of an agreement which "is deemed to incorporate the Regulations," but does not (yet) contain a covenant, is not made clear. The Regulations impose a number of duties on the landlord, such as repairing of main walls, floors, water mains (see para. 1); unlike the Housing Act provision, they expressly oblige a tenant to report, and in writing, damage to items for which the landlord is responsible (para. 5); but they do not expressly make such reporting a condition of the landlord's liability.

On the other hand, the consistency with which "and replacements" follow "repairs" may well indicate intelligent anticipation of argument based on *Lister* v. *Lane and Nesham* [1893] 2 Q.B. 212 (C.A.), recently applied in *Sotheby* v. *Grundy* [1947] 2 All E.R. 761 (inherent defects, necessitating rebuilding, outside ordinary covenant).

Liability frequently depends on whether the part affected is "exterior" or "interior." Presumably these expressions do not mean the same as "external" and "internal" (in *Green* v. *Eales* (1841) 2 Q. B. 225, a party wall was held to be an external part; such are of course rare in the case of farms). But the elaborate sub-division has provided for such a contingency as a broken window. In *Ball* v. *Plummer* (1879), 23 Sol. J. 656, broken window panes were held to be repairable under a covenant to repair external parts, being "part of the skin of the house"; but under the Regulations, the landlord who is to execute all repairs and replacements to windows is excused liability for "glass, locks and fastenings."

A general qualification of the landlord's liability is that expressed by the words "rendered necessary by the wilful act or negligence of the tenant, or any members of his household or his employees" (para. 4); and responsibility for the repair is imposed on the tenant in such cases (para. 6). This may give arbitrators some difficult fact-finding to do, and perhaps courts may have to consider what is covered by the words "members of his household."

On the whole, however, I think that practitioners concerned with agricultural tenancies will find themselves confronted with fewer awkward problems, such as those that arose out of tenancies where there was, according to the parties "no agreement"; or where the answer to a question "whose responsibility" had, to the client's bewilderment, to be "no one's."

R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

Charles Pratt, third son of Chief Justice Pratt, was admitted to the Inner Temple on 5th June, 1728, at the age of fourteen. His father, who had been a member of the same Inn, had died three years before. Ten years later he was called to the Bar, having in the meantime assiduously studied law at King's College, Cambridge, though at that time its members were entitled to take their degrees without sitting for any examination. In his profession, he afterwards said, his father's reputation had not been worth a guinea to him. He had little work either in town or on the Western Circuit and after nine or ten years he was seriously considering going back to Cambridge to qualify for Holy Orders. His school and college friend, Sneyd Davis, the poet, wrote him an ode begging him to persevere and not to

"... think the task severe, the prize too high
Of toil and honour for thy father's son."

Robert Henley (afterwards Lord Northington), his senior on the circuit, gave him more practical assistance. Contriving to get him briefed as his junior in an important case, he retired from it at the last moment on a plea of indisposition and gave his young friend the chance of distinguishing himself, which he seized so effectively that it proved the turning point of his career. In 1757, when Henley was given the Great Seal, Pratt succeeded him as Attorney-General. Subsequently he became successively Chief Justice of the Common Pleas, a peer, with the title of Lord Camden, and finally Lord Chancellor.

A JUDGE'S GRAVE

It is reported that the grave of Sir Robert Foster, Chief Justice of the King's Bench from 1661 till his death in 1663, has been found at Egham Parish Church. The site must have been forgotten after the old church was demolished in 1817. At the time of the rebuilding, his monument, consisting of an inscribed pedestal, on which in an oval niche was his bust in cap and robes, with his coat of arms above, was removed to the east wall of the new church. His father was a Justice of the Common Pleas before him, and he himself was raised to the Bench of that court in 1640. When the Civil War broke out he joined the King at Oxford and after the defeat of the Royalists he went into retirement until the Restoration, when he was reinstated in his office, at the age of over seventy. He played an active part in the trials of the regicides and in October, 1661, despite his advanced years, he was promoted to preside in the King's Bench. In that capacity he had to deal with the crises of a post-revolutionary period and he was praised for his services "in punishing the felonies and other outrages which proceeded from an old disbanded army and in restraining the over-great mercy of the King in his frequent pardons granted to such sort of criminals." He was testy and severe with the Quakers who refused to take the oath of allegiance but at his last important trial, that of Thomas Tonge and others, charged with plotting a revolt, he was obviously a tired man with a failing voice. He grew weaker as he followed his last circuit and he died soon after his return.

JUDGES AT EGHAM

The Chief Justice and his father before him lived at Foster House or Great Fosters, a mile and a half south of Egham, an early Elizabethan mansion, spacious and with particularly fine ceilings. Evidently it did not take its name from him, for in the will of Sir John Doderidge, a Justice of the King's Bench, who died there in 1628, it was described as "my house of ffforsters." According to a local tradition it had been a hunting seat of Queen Elizabeth, so perhaps, as has been suggested, it was then the residence of the keepers of the forest. About this time Egham seems to have been a favourite resort of the judges, for here lived Sir John Denham, Chief Baron of the Exchequer in Ireland from 1609 to 1612, and then Chief Justice of the King's Bench there till 1617, when he returned to England as a Baron of the Exchequer at Westminster, remaining on the Bench till his death in 1639. He built the mansion called "The Place," and he too was buried in Egham Parish Church a quarter of a mile away. His monument, likewise transferred to the new building, where it was placed at the west end, was far more elaborate than Foster's, a complicated affair in veined alabaster representing skeletons and winding-sheets. Within a recess the figure of the judge rose from the tomb in his winding-sheet, his face upturned to Heaven. On the tomb were the words "*Præterita sperno*" and above his sculptured robes the sentence "*Sic transit gloria mundi.*"

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

INVALID ISSUE OF PREFERENCE SHARES: PURCHASER'S CLAIM TO REFUND

Linz *v.* Electric Wire Co. of Palestine, Ltd.

Lord Simonds, Lord Morton of Henryton and Sir Madhavan Nair. 8th March, 1948

Appeal from the Supreme Court of Palestine (appellate jurisdiction).

The defendant company, in 1935, allotted to the plaintiff certain preference shares for which she paid and which in 1941 she sold to transferees. In 1943, an action against the company by another allottee of their preference shares was settled, a term of the settlement being an admission that the allotment of the shares in question was invalid. The plaintiff, alleging that the issue to her of the shares was invalid, then sought repayment of the purchase price on the ground of total failure of consideration. She intimated to the bank through which she had sold the shares that she would not retain the proceeds if her claim against the company succeeded. The District Court of Haifa dismissed the action, its decision being affirmed by the Supreme Court. The plaintiff now appealed. The Board took time for consideration.

LORD SIMONDS, giving the opinion of the Board, said that the plaintiff's offer of refund to the bank and the fact that she received less for the shares than she had paid for them were both irrelevant. Having been duly registered as a shareholder and parted with her shares for value by a sale resulting in registration of the transferees as shareholders in the defendant company, she had obtained exactly what she had bargained to obtain. Whether the transferees, assuming that the shares had indeed been invalidly issued (which, therefore, they (their lordships) did not decide), would have an action against the plaintiff did not fall to be determined. A person who had parted with his shares for value could not at a later date, possibly against the interest of her transferee, challenge the validity of the issue and, succeeding in that claim, claim repayment of the purchase price as on a total failure of consideration. The indisputable proposition that when an *ultra vires* issue of shares had been made the subscribers were entitled to refund of their money did not justify the claim here made. Appeal dismissed.

APPEARANCES: *Sir Valentine Holmes*, K.C., and *Hon. D. Buckley* (*Hardman, Phillips & Mann*); *Jennings*, K.C., and *Quass* (*Herbert Oppenheimer, Nathan & Vandyk*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

EXCESS PROFITS TAX: "MONEY NOT REQUIRED FOR BUSINESS"

Acme Flooring Co., Ltd. *v.* Inland Revenue Commissioners

Tucker, Somervell and Cohen, L.JJ. 3rd March, 1948

Appeal from Atkinson, J.

The appellant company carried on the business of manufacturing and laying wooden blocks for streets and flooring. In the ordinary course of their business before the war it was their policy to increase their stocks of wood so far as possible, and to have large cash balances on deposit with their bankers for the purchase of wood when favourable conditions arose. By January, 1942, their stocks had fallen to some £50,000 in value as compared with £156,000 in January, 1939, whereas their cash balances increased, and at 31st January, 1942, stood at £235,000, the lowest cash balance in their standard year having been £82,500. Excess profits tax was imposed by s. 12 (1) of the Finance (No. 2) Act, 1939. By s. 13 (3) if the average amount of capital employed in any chargeable accounting period exceeds the average amount employed in any standard period, the standard profits for a full year shall, in relation to that chargeable accounting period, be increased by a prescribed percentage. By s. 14 (2) the average amount of capital employed is to be computed according to Pt. II of Sched. VII to the Act. By para. 3 of the Schedule, "any moneys not required for the purposes of the . . . business, shall be left out of account." The company sought to have the large cash balances in hand for the accounting periods taken into account as showing an increase of capital over the standard period (resulting in an increase of standard profits, and a consequent decrease of excess profits tax), but the Special Commissioners and, on appeal, Atkinson, J., held that those sums must be disregarded as not being required for the business because, owing to the establishment of the Timber Control and the limited amount of timber which the company could obtain licences to import, they could not use the money to purchase all they needed. The Commissioners found, however, that the cost to the company of replacing timber stocks on the level of 1939 would be £300,000. The Commissioners held that the cash on deposit should be excluded to the extent in each of the two accounting periods of the difference between the minimum cash balance existing in that year and the £82,500 minimum in the standard year. The company appealed.

COHEN, L.J.—TUCKER and SOMERVELL, L.JJ., agreeing—said that Atkinson, J., had relied in his own decision on *Thomas Roberts* (*Westminster*), *Ltd.* v. *Inland Revenue Commissioners* (1946), E.P.T. Leaflet No. 2. It was argued for the company that there was no evidence on which the Commissioners could have found that the cash deposits would not be needed for a reasonable tract of time. Having regard to the probability that control and the necessity of living from hand to mouth would continue for many years, there was such evidence. There was no ground for reversing the Commissioners' decision on that point, which, as Atkinson, J., had said, was one of fact. It was finally argued that not until controls were actually removed could it be decided whether a reasonable time had expired within which the balances might be needed. In his (his lordship's) opinion, that was the wrong approach to the problem, and the Commissioners were bound to estimate for themselves the probability of the removal of controls. Appeal dismissed.

APPEARANCES: *Tucker*, K.C., and *J. W. P. Clements* (*George and William Webb*); *Donovan*, K.C., and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: EXEMPTION CLAIMED FOR CHARITABLE TRADING

Tennent Plays, Ltd. *v.* Commissioners of Inland Revenue

Tucker, Somervell and Cohen, L.JJ. 5th March, 1948

Appeal from a decision of Macnaghten, J., affirming a decision of the Income Tax Special Commissioners by which they rejected a claim for exemption from Sched. D income tax under s. 30 (1) (*c*) of the Finance Act, 1921, as amended by s. 24 of the Finance Act, 1927, in respect of trading profits for certain periods.

By s. 30 (1) (*c*), as amended, exemption is granted from tax under Sched. D in respect of the profits of a trade carried on by any charity, if the profits are applied solely to the purposes of the charity and the trade is exercised in the course of the actual carrying out of a primary purpose of the charity. By subs. (3), ". . . the expression 'charity' means any body of persons or trust established for charitable purposes only." The company was incorporated in July, 1942, as a non-profit making company limited by guarantee. The promoters were H. M. Tennent, Ltd. It was formed after consultation with the Council for the Encouragement of Music and the Arts (C.E.M.A.), of which it became an associate. It was stated in the memorandum of association that the company's objects were *inter alia* to promote educational plays and arts of all kinds; to present and organise plays and musical and other entertainments "whether educational, partly educational or scientific or partly scientific or otherwise, for philanthropic or charitable purposes . . . As ancillary to the foregoing objects of the company, and with a view to finding income and funds for the purposes of the company, to carry on business as theatre, music hall, concert hall, dance hall, ballroom, public hall, cinema and picture house proprietors and managers." The Commissioners found that the company in fact did nothing but foster dramatic art subject to the guidance of C.E.M.A. The Commissioners held that they could not, in face of the objects stated in the memorandum, regard the company as confined to the pursuit of charitable purposes either by way of education or of benefit to the community. Macnaghten, J., upheld them, and the company appealed.

COHEN, L.J.—TUCKER and SOMERVELL, L.JJ., agreeing—said that it was argued for the company that the mere fact that in carrying out a charitable object some non-charitable activities might be undertaken did not deprive the company of its charitable character, as the question whether a company was established for "charitable purposes only" depended on what its main or dominant purpose was. He (his lordship) thought that the principle that one must look only at the main or dominant purpose of a company must be taken with reserve. He felt some doubt whether a company could be said to be established "for charitable purposes only" if it carried on a substantial non-charitable purpose. It was not necessarily to be assumed that the first paragraph in the memorandum of association by itself expressed the company's main object. The power to "enter into agreements, if desirable, with authors, dancers,

actors or others" was "in connection with all or any of the objects of the company"; but there was no such limitation on the power "to produce, distribute, rent or otherwise deal in cinematograph films." The Commissioners and Macnaghten, J., were right. Appeal dismissed.

APPEARANCES: *Upjohn*, K.C., *Scrimgeour*, K.C. and *W. Lindsay* (*McKenna & Co.*); *Sir Frank Soskice*, K.C. (*S.-G.*), *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SUR-TAX: SETTLEMENT

Wolfson *v.* Inland Revenue Commissioners

Tucker, Somervell and Cohen, L.JJ. 22nd March, 1948

Appeal from Atkinson, J.

By a deed of covenant of 26th March, 1940, the respondent taxpayer and his brother, as settlors, each irrevocably covenanted with trustees that he would every year for seven years or until his death, whichever period should be the shorter, pay to the trustees a sum calculated according to and to be held by the trustees on trusts declared by the deed. The annual sum was to be such a sum as, less tax, left a sum equal to the total of dividends received by the settlor during the previous twelve months on the ordinary shares held by him in a certain limited company. If the settlor disposed of any of the shares for value, he was to pay under the deed a sum equal to the dividends on the shares in the company which he retained plus dividends and other income received from the invested proceeds of the alienated shares. The trustees were to use the moneys received to pay each of the settlor's eight sisters £450 a year tax-free. The respondent taxpayer paid £14,612 10s. under the deed. The Special Commissioners held that the gross equivalent of that sum was not deductible in computing the taxpayer's total income. Atkinson, J., reversed them, and the Crown now appealed. By s. 38 (1) of the Finance Act, 1938, "If . . . the terms of any settlement are such that: (*a*) any person has . . . power . . . whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor . . . may cease to be liable to make any annual payments payable by virtue of any provision of the settlement . . . any sums payable . . . by virtue . . . of that provision . . . shall be treated as the income of the settlor . . ." (*Cur. adv. vult.*)

TUCKER, L.J., said that the Crown argued that a power whereby a three-quarters majority of the shareholders could put the company into liquidation so that the sums payable under the settlement ceased to be payable followed necessarily under the general law from a settlement worded like this one. The taxpayer argued that any such power must be found in the settlement itself, either expressly or by necessary implication from the language used. The question depended on the proper construction of the words "if and so long as the terms of any settlement are such that . . ." He (his lordship) did not think that the Legislature could have contemplated the necessity of going outside the settlement to find the power. It could have provided for such a thing in clearer language. The power must be found in the settlement and be derived directly from it. That was not so here, and the appeal failed.

SOMERVELL, L.J., read a concurring judgment.

COHEN, L.J., dissenting, said that in his opinion if, looking at the settlement in the light of the general law, one knew that a power must exist in some person or persons whereby the covenanted payments would cease to be payable, the subsection could operate.

Appeal dismissed.

APPEARANCES: *Sir Frank Soskice*, K.C. (*S.-G.*), *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*); *Sir Roland Burrows*, K.C., and *Graham-Dixon* (*Harris, Chetham & Cohen*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: ANNUAL PAYMENT MADE UP OUT OF CAPITAL

Inland Revenue Commissioners *v.* Morant's Settlement Trustees

Tucker, Somervell and Cohen, L.JJ. 22nd March, 1948

Appeal from Macnaghten, J.

A settlor paid £100,000 to trustees under a settlement which provided that they were to hold the income on protective trusts within s. 33 of the Trustee Act, 1925, for the benefit of the settlor during his life. Whenever in any year the income of the fund should be less than a sum which, after deduction of income tax, would leave £6,500, the trustees were at the end of the year to raise out of the trust fund and pay to the settlor the deficiency. In each of the four material years the trustees had to make a considerable payment to the settlor out of capital under that provision. The Special Commissioners held the trustees rightly assessed on those sums as being annual payments under r. 21 of the All Schedules Rules of the Income Tax Act, 1918; and that the sums should be "grossed up" to the appropriate amounts having regard to the relevant rate of income tax. Macnaghten, J., held the payments taxable as annual payments under r. 21, but that they should be treated as gross payments and assessed accordingly. The trustees appealed on the first point, and the Crown cross-appealed on the second. (*Cur. adv. vult.*)

COHEN, L.J., reading the judgment of the court on the appeal, said that the trustees contended that, on the true construction of the settlement, the settlor had never alienated the entire interest in the capital of the trust fund, so that the payments made each year were merely repayments of capital and, as such, not taxable. The Crown contended that the settlor had irrevocably parted with the £100,000 to the trustees and that, on the true construction of the settlement, the sums in question were annual payments to the settlor assessable under r. 21. The trustees relied on *Wheeler* v. *Humphreys* [1898] A.C. 506; *In re Cochrane* [1906] 2 I.R. 200; and *New South Wales Stamp Duties Commissioner* v. *Perpetual Trustee Co., Ltd.* [1943] A.C. 425. The question was difficult, but the court held that the Crown's contention must prevail. It was always open to the settlor to determine the nature of the interest which he retained; but to see what that nature was the court must look at the settlement. The document could have been framed to reserve to the settlor an interest in the capital. He had, however, in his directions to the trustees, chosen to attach an income quality to the payments under consideration, and must abide the consequences. Appeal dismissed.

TUCKER, L. J., dissenting on the cross-appeal, thought the payments liable to tax payable on the gross equivalent of the sums paid to the settlor, and that the cross-appeal should be allowed.

SOMERVELL, L.J.—COHEN, L.J., agreeing—said that both trustees and settlor thought, and the Special Commissioners found, that the sums raised out of capital were paid on the footing that they were capital. If the settlor had realised that his receiving £*x* out of capital involved a further raising out of capital of the appropriate sum for tax he might possibly have given a direction limiting the sum to be raised out of capital to the sum in fact raised, and have suffered deduction of tax.

Cross-appeal dismissed.

APPEARANCES: *Donovan*, K.C., and *Graham-Dixon* (*Janson, Cobb, Pearson & Co.*); *Sir Frank Soskice*, K.C. (*S.-G.*), *J. H. Stamp*, and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

POOR PERSON: COSTS

Brittan *v.* Brittan

Tucker and Evershed, L.JJ., and Hodson, J. 14th May, 1948

Application for leave to appeal from an order as to costs made by Judge Kirkhouse Jenkins, sitting as Divorce Commissioner at Bristol.

The appellant husband, a poor person, was the unsuccessful respondent in a defended petition for divorce presented by his wife as an ordinary litigant. Before making his order for costs, the Commissioner was informed that, though the husband had been in the Forces when the poor person's certificate was issued, he was at the date of the trial earning £6–£7 a week in an aircraft factory. In view of the improvement in the husband's financial position, the Commissioner in the exercise of his discretion ordered the husband to pay the full taxed costs of the wife. He refused leave to appeal against that order. By R.S.C., Ord. 16, r. 28 (1), "... unless the court or a judge shall otherwise order no poor person shall be liable to pay costs to any other party or be entitled to receive from any other party any profit-costs or charges." (*Cur. adv. vult.*)

TUCKER, L.J., reading the judgment of the court, said that in the opinion of the court there was nothing in Ord. 16 to limit the discretion clearly conferred by the words "unless the court or a judge shall otherwise order" in r. 28 (1). It was, they thought, intended to leave the matter to the unfettered discretion of the judge so as to enable him in any proper case to order a poor person whose financial position had improved, or where the circumstances otherwise justified, to make such contribution as he thought proper towards the costs of the opposing party. That general discretion was not limited by the special power given by r. 31BB to make an order as to costs against a poor person who had obtained his certificate by misrepresentation whatever his

financial position might be at the date of the order. If a poor person was ordered to pay the costs of an ordinary litigant, he was thereby made liable to pay that litigant's costs taxed on the ordinary basis. There was accordingly no foundation for the suggestion that a poor person ordered to pay the costs of an ordinary litigant paid costs taxed on some special or reduced basis, for example, so as to exclude profit-costs and charges. On the other hand in a proper case a judge might order a poor person to pay some fixed sum towards the other party's costs. Although there might be cases in which it was proper, after careful investigation of evidence as to increase of means or other matters, to make an order for a poor person to make some contribution towards the costs of the opposing party, the circumstances would have to be wholly exceptional to justify an order against a poor person to pay the full taxed profit-costs. For the reasons stated, however, the court had no power here to interfere. Application refused.

APPEARANCES: *A. J. Irvine* (*Law Society Poor Person's Divorce Department*); *C. M. Hughes* (*Wansbroughs, Robinson, Tayler and Taylor*, Bristol).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: STIRPITAL DISTRIBUTION

***In re* Hall; Parker *v.* Knight**

Harman, J. 23rd March, 1948

Adjourned summons.

The testatrix by her will, in the handwriting of one of the witnesses, provided: "I leave to my sister, Maud Beatrice Parker, half my estate—£100 to Elsie Parrott, the remainder to be divided equally between my youngest sister May, and my niece Irene and her children." At the date of the will the niece had three children and a fourth had since been born. The summons was taken out to decide how the "remainder" should be divided.

HARMAN, J., said that, construing the will without reference to authority, his view was that "May" should get one-half, and "Irene" and her children the other half. This gave effect to the stirpital basis of distribution which he would expect to find in a family gift. Such a construction was assisted by the comma, although no great reliance could be placed on it as it might not have been intended by the testatrix. The cases showed that there was a *prima facie* rule that division should be *per capita*, but this could be easily displaced by the context (*In re Dale* [1931] 1 Ch. 357). The circumstances of the present case were enough to displace the rule. The cases showed generally that cases of family division were usually stirpital. He could not altogether agree with the statement in *In re Alcock* [1945] Ch. 264, that there was much diversity in the authorities.

APPEARANCES: *J. A. Plowman* (*C. Grobel, Son & Co.*, for *Arthur Robson*, Chiswick); *Stranders* (*Curwen, Carter & Evans*, for *Hubert Way & Malpas*, Southsea); *H. E. Francis, E. Bagshawe* (*Evelyn Jones & Co.*)

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SEPARATION ORDER: CLAIM FOR ARREARS AGAINST HUSBAND'S ESTATE: FAMILY PROVISION

***In re* Bidie; Bidie *v.* General Accident, Fire & Life Assurance Corporation, Ltd.**

Jenkins, J. 19th April, 1948

Adjourned summons.

In 1923 the plaintiff was granted by justices a separation order against her husband including an order for payment of £2 per week. Certain irregular payments were made, but the husband disappeared in 1929, and the plaintiff heard nothing of him until his death on 16th January, 1945. He had made a will in 1937, but this was not found and on 13th April, 1945, a full grant of administration was made to the plaintiff and one of her sons on the assumption of an intestacy. The will was later found, the grant of administration was revoked and on 7th September, 1946, a grant of probate was made. The plaintiff took out this summons on 8th January, 1947, claiming (*a*) that she was a creditor against the husband's estate for arrears of maintenance, and (*b*) that provision should be made for her under the Inheritance (Family Provision) Act, 1938. By s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, payment of sums directed to be paid under the Act may be enforced in the same way as sums payable under an affiliation order, i.e., by distress and committal, in accordance with s. 4 of the Bastardy Amendment Act, 1872. The Inheritance (Family Provision) Act, 1938, provides by s. 2 (1) that an order shall not be made "save on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out."

JENKINS, J., dealing with the first ground of claim, said that in his view the Act of 1895 recognised pre-existing common-law and equitable rights of a wife, and provided a particular form of remedy. Such common-law and equitable rights would not, however, have sufficed of themselves to support a claim against the estate of a deceased husband. Further, no case had been cited of any action of debt *inter vivos* in respect of arrears under a maintenance order, or of any admission of a proof in bankruptcy based on such arrears. Of the authorities, *In re Harrington* [1908] 2 Ch. 687, laid down that the liability of a putative father under a bastardy order was purely personal and could not be enforced against his estate. *In re Stillwell* [1916] 1 Ch. 365, impliedly approved in *In re Naters* (1919), 88 L.J. Ch. 521; 122 L.T. 154, decided that arrears of alimony could be recovered against a deceased husband's estate, but in *In re Hedderwick* [1933] Ch. 669, Luxmoore, J., declined to follow *In re Stillwell* and was followed unhesitatingly in *In re Woolgar* [1942] Ch. 318. There was no distinction for this purpose between an order for alimony issuing out of the High Court and a justice's order for maintenance. The claim against the estate must fail. Regarding the second claim, it had been objected that it was out of time by reason of s. 2 (1) of the Act of 1938. The question depended on whether the grant of letters of administration or the grant of probate was to be reckoned the date from which time ran. After considering the full terms of the Act he concluded that the section meant literally what it said, and that the original grant of administration was the date from which time should run. The claim therefore failed. The plaintiff would pay the defendants' costs as between party and party, defendants' balance of costs to be paid out of the estate.

APPEARANCES: *Mulligan* (*F. Duke & Sons*); *B. S. Tatham* (*Henry Boustred & Sons*); *J. A. Sparrow* (*A. J. Adams & Adams*, for *R. L. Frank & Co.*, Truro); *O. Lodge* (*W. R. Perkins* for *Nelson L. Mitchell*, Southend-on-Sea).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

BANKRUPTCY: REPUTED OWNERSHIP

***In re* Fox; Oundle and Thrapston R.D.C. and Others *v.* The Trustee**

Jenkins and Harman, JJ. 23rd April, 1948

Appeal from Peterborough County Court.

The bankrupt, a builder, contracted with the first appellants to erect certain houses, the contract providing that the appellants' architect should furnish monthly interim certificates covering work executed and "material and goods delivered upon the site for use in the works," upon presentation of which the bankrupt was entitled to be paid 90 per cent. of the sum certified, whereupon the property of such goods on the site passed to the appellants. The bankrupt sub-contracted with the second appellants for the tiling of the houses on the footing that all slating and tiling material remained the property of the second appellants until fixed. Disputes arose regarding the title to certain building materials: (*a*) certain materials provided by the bankrupt for the purpose of the contract which were stored in his yard by arrangement with the architect; (*b*) similar material lying loose at the building site (in both these cases the property had passed to the first appellants under the terms of the contract); and (*c*) certain tiles left on the site by the second appellants. The trustee in bankruptcy disclaimed the building contract and claimed the materials under s. 38 (2) of the Bankruptcy Act, 1914; the county court judge decided in his favour.

JENKINS, J., reading the judgment of the court, said that a consideration of *In re Florence* (1879), 10 Ch. D. 591, *In re Couston* (1873), L.R. 8 Ch. 520, and *In re Kaufman* [1923] 2 Ch. 89, showed that the first question was whether the circumstances were such that the inference that the bankrupt was the owner must arise. There was a material difference between the goods on the site and the goods in the yard. The latter would seem to an inquirer obviously to be the bankrupt's property, and they were in his possession "in his trade or business" (*Colonial Bank* v. *Whinney* (1885), 30 Ch. D. 261, at p. 274) and "by the consent and permission of the true owner." So far as the (*a*) goods were concerned, the appeal must be dismissed. Regarding the goods on the site, no distinction could be made between (*b*) and (*c*) in the absence of evidence of a custom that tiling was always sub-contracted. A hypothetical inquirer would see materials visibly appropriated to the contract and would know that it was most probable that the builder was building on the land of another for that person's account, so no inference as to ownership of the materials could be drawn. A

further inquiry into the contract would show that the question of ownership depended on the certificates. The most that could be said was that an inference might be drawn that the materials were those of the bankrupt, and the position was "ambiguous" within the meaning of *In re Keen* [1902] 1 K.B. 555. The trustee had relied on *In re Weibking* [1902] 1 K.B. 713, but that could only be regarded as a decision on the particular facts. The appeals regarding materials (*b*) and (*c*) must be allowed. The second appellants should have their costs of appeal and below. The first appellants should have their costs of appeal only.

APPEARANCES: *Hon. D. Buckley* (*Hiscott, Troughton & Page*, for *Hunnybun & Sykes*, Thrapston); *Upjohn*, K.C., and *J. G. S. Hobson* (*Bennett, Ferris & Bennett*, for *Bray & Bray*, Leicester); *Van Oss* (*Chamberlain & Co.*, for *Mellows & Sons*, Peterborough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

WORKMEN'S COMPENSATION: CLAIM FOR DAMAGES

Elligott *v.* Nebbett

Morris, J. 5th March, 1948

Action.

While the plaintiff was working on his employers' premises he was injured by the negligence of the servant of the defendant, a haulage contractor, while he was collecting refuse from the premises. While off work after the accident, the plaintiff asked the employers for an advance, and received £1. When paying him further sums the employers' officer suggested that he should apply for workmen's compensation. He asked whether his acceptance of such payments would prejudice his right to claim damages, and expressed doubts as to the effect on his rights of his accepting any sums. The officer testified that he was unwilling to accept any sums which would prejudice his rights, and that he told the plaintiff that, if he succeeded in a common-law action in respect of the accident, he would have to repay the sums which he was then receiving. By s. 30 (1) of the Workmen's Compensation Act, 1925, an injured workman may proceed against his employer for compensation and against a third party whom he alleges to be responsible for his injuries, but may not recover both compensation and damages. The defendant set up that subsection against the plaintiff's claim against him for damages.

MORRIS, J., said that the question was whether the plaintiff had "received compensation." On the facts proved, whatever the precise words used by the plaintiff and his employers' officer, the payment and the acceptance of the sums in question were conditional. They were paid and received as sums which, in the event of an unsuccessful common-law action, would be retained as workmen's compensation, and, in the event of a successful action, would be refunded to the employers. That was quite a different case from one where an employee received workmen's compensation as such and later changed his mind. Judgment for the plaintiff.

APPEARANCES: *Edgedale*, K.C., and *Solley* (*Frank E. Fine and Co.*); *R. M. Everett* (*Hewitt, Woollacott & Chown*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FACTORY: SAFE MEANS OF ACCESS TWO DEFENDANTS: COSTS

O'Mahony *v.* Press & Sons, Ltd. and Others

Atkinson, J. 13th March, 1948

Action.

The plaintiff was employed by the first defendants, a company of contractors, who were erecting gas pipes on premises occupied by the second defendants, a gas company. A chain had to be removed from a pipe hanging at a height from the ground which was about to be lowered against and jointed to a pipe beneath it. The removal of the chain could have been effected without danger by means of a ladder, and ladders were available. The plaintiff was told to remove the chain from where he was, namely, on a raised steel platform called a catwalk. In order to remove the chain from that position, he held on to the catwalk and placed one foot on the lower pipe. While it was there, the pipe to be lowered suddenly dropped on to his foot and broke his toe. He claimed damages against the contractors, and against the gas company as occupiers of the premises.

ATKINSON, J., said that he found the contractors liable for negligence in the unsafe system of working employed. He did not see how the gas company could be made liable. By s. 26 (1) of the Factories Act, 1937, "there shall, so far as reasonably practicable, be provided . . . safe means of access to every place at which any person has . . . to work." The accident was not primarily caused by anything to do with access. True, it would not have happened if the plaintiff had been provided with a ladder, but the words "so far as reasonably practicable" did not involve here that a ladder should at all times be leaning against every part of the plant. Safe means of access were in fact provided, for ladders were available. Section 26 (2) prescribed precautions to be taken where a workman was liable to fall more than 10 feet. *Gorris* v. *Scott* (1874), L.R. 9 Ex. 125, showed that the plaintiff here, having suffered from something other than a fall, could not rely on a breach of a subsection concerned with preventing falls. His lordship awarded the plaintiff £255 damages and made a "Bullock" order for payment by the contractors of the gas company's costs, on the ground that it was reasonable to join the gas company as defendants in view of allegations made by the contractors in correspondence as to how the accident had happened.

APPEARANCES: *Edgedale*, K.C., and *Shapiro* (*Tiddeman, Coules & Co.*); *R. M. Everett* (*Gardiner & Co.*); *J. MacMillan* (*L. Bingham & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: EFFECT OF WAGES ON CHILD ALLOWANCE

Williams *v.* Doulton

Atkinson, J. 19th March, 1948

Case stated by Income Tax General Commissioners.

During each of the two material years, the appellant taxpayer had living with him a son, born in 1930, who earned more than £50 in wages. By s. 21 (1) of the Finance Act, 1920, as amended by s. 9 (3) of the Finance (No. 2) Act, 1939, if a taxpayer has living any child under sixteen years he shall be entitled in respect of each such child to a deduction of £50; but by s. 21 (3) no deduction shall be allowed in respect of any child who is "entitled in his own right to an income exceeding £50 a year." The General Commissioners held the taxpayer not entitled to a deduction in respect of his son. The taxpayer appealed.

ATKINSON, J., said that it was argued that the son could not be said to be "entitled in his own right to an income," the words being inapt to describe wages which he earned. The Crown argued that "in his own right" merely meant that the money was the son's and not an allowance paid to the father in respect of him. In *Miles* v. *Morrow* (1940), 23 Tax Cas. 465, an Irish case, emoluments received by a boy were held to be his income in his own right. That case settled this. Appeal dismissed.

APPEARANCES: The taxpayer in person; *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ROAD TRAFFIC: "DRIVING A MOTOR VEHICLE"

Saycell *v.* Bool

Lord Goddard, C.J., Birkett and Pritchard, JJ.

28th May, 1948

Case stated by Sheffield justices.

The respondent was charged with driving a motor-van on a road when disqualified for holding a driving licence, contrary to s. 7 (4) of the Road Traffic Act, 1930, and with driving it when no third-party insurance policy was in force, contrary to s. 35 (1). The respondent's van was standing outside his premises in the road, which was on an incline. His garage was 100 yards lower down the road. There was no petrol in the tank of the van. Wishing to put the van into the garage, he set it in motion by pushing it, jumped into the driving seat, and was steering it down the hill when he was stopped by police officers. He had an insurance policy but it was inoperative if he drove while disqualified for holding a licence. He had been so disqualified on an earlier conviction, but the disqualification was removed on appeal to quarter sessions a few days before the present case was heard by the justices. The justices dismissed the informations, holding that driving a mechanically propelled vehicle required that it should be propelled by its engine; that the van was at the time incapable of being mechanically propelled because it lacked petrol; that, therefore, it was not at the time a mechanically propelled vehicle within the meaning of the Act; and that no offence had been committed. The police appealed.

LORD GODDARD, C.J., said that the respondent must, in the circumstances, be held to have been driving the van, for he had set it in motion and was controlling it by means of the steering wheel and the brakes. The case would be remitted with an intimation that a technical offence had been committed, and that special reasons existed for not imposing further disqualification in respect of it. Appeal allowed.

APPEARANCES: *G. W. Wrangham* (*Sharpe, Pritchard & Co.*, for *The Town Clerk*, Sheffield); *H. Morris* (*Paisner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 28th May :—
MOTOR SPIRIT (REGULATION).
RIVERS BOARDS.
SUPERANNUATION (MISCELLANEOUS PROVISIONS).

HOUSE OF LORDS

Read First Time :—
EMPLOYMENT AND TRAINING BILL [H.C.] [27th May.
NATIONAL INSURANCE (INDUSTRIAL INJURIES) BILL [H.C.] [27th May.
ST. HELENS CORPORATION (ELECTRICITY AND GENERAL POWERS) BILL [H.C.] [26th May.
STATUTE LAW REVISION BILL [H.L.] [27th May.
For further promoting the revision of the Statute Law by repealing Enactments which have ceased to be in force or have become unnecessary and for facilitating the publication of a Revised Edition of the Statutes and the Citation of Statutes.

Read Second Time :—
AGRICULTURE (SCOTLAND) BILL [H.C.] [27th May.
ASCOT RACE COURSE BILL [H.C.] [27th May.
HOUSE OF COMMONS MEMBERS' FUND BILL [H.C.] [27th May.
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL [H.C.] [27th May.

Read Third Time :—
BEVERLEY CORPORATION BILL [H.L.] [13th May.
BIRMINGHAM CORPORATION BILL [H.L.] [13th May.
COVENTRY CORPORATION BILL [H.L.] [13th May.
CROMER URBAN DISTRICT COUNCIL BILL [H.L.] [26th May.
SHOREHAM HARBOUR BILL [H.C.] [26th May.

In Committee :—
COMPANIES BILL [H.L.] [27th May.
EDUCATION (MISCELLANEOUS PROVISIONS) BILL [H.C.] [27th May.
INDUSTRIAL ASSURANCE AND FRIENDLY SOCIETIES BILL [H.C.] [25th May.

HOUSE OF COMMONS

Read Second Time :—
NURSERIES AND CHILD-MINDERS REGULATION BILL [H.C.] [28th May.
RADIOACTIVE SUBSTANCES BILL [H.L.] [28th May.
ROUND OAK STEEL WORKS (LEVEL CROSSING) BILL [H.L.] [26th May.

Read Third Time :—
BIRMINGHAM UNIVERSITY BILL [H.L.] [28th May.
IPSWICH CORPORATION BILL [H.C.] [28th May.
LAW REFORM (PERSONAL INJURIES) BILL [H.L.] [28th May.
SMETHWICK CORPORATION BILL [H.C.] [28th May.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1069. **Agriculture** (Delegation of Pest Control Functions to County Agricultural Executive Committees) Regulations, 1948. May 20.
No. 1124. **Electricity** (Conversion Date) (No. 2) Order, 1948. May 27.
No. 1080. **Exchange Control** (Payments) Order, 1948. May 25.
No. 1077. **Motor Fuel** (Car Hire) (Revocation) Order, 1948. May 25.
No. 1030. **Town and Country Planning** (General Development) (Scotland) Order, 1948. May 13.
No. 1047. **Trading with the Enemy** (Custodian) (Amendment) Order, 1948. May 19.

DRAFT STATUTORY INSTRUMENTS

Town and Country Planning (Minerals) Regulations, 1948. May 13.
Town and Country Planning (Modification of Mines Act) Regulations, 1948. May 13.

MINISTRY OF TOWN AND COUNTRY PLANNING

Circular No. 45. Model Form of Application for Planning Permission. May 28.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. WALTER GEORGE HAMMOND Registrar of the Boston District Registry of the High Court and Registrar of the South Lincolnshire Group of County Courts, which include the Spalding, Holbeach, Bourne, Boston, Sleaford, Spilsby and Skegness courts. The office is a new one.

Mr. GEORGE BILLINGTON, Senior Assistant Solicitor in the West Riding Prosecuting Solicitor's Department, has been appointed Coroner for the Halifax County District and Borough. He was admitted in 1933.

Mr. R. H. HULME, Assistant Solicitor to the Bradford Corporation, has been appointed Clerk to the Aireborough Urban District Council in succession to Mr. F. L. Parker, who has taken up an appointment under the Yorkshire Electricity Board. Mr. Hulme was admitted in 1936.

Notes

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 17th June, 1948, at 10 a.m.

The fourth annual general meeting of Liverymen and Freemen of the Worshipful Company of Solicitors of the City of London will be held at Tallow Chandlers' Hall, 4 Dowgate Hill, E.C.4, on Wednesday, 23rd June, 1948, at 4.30 p.m.

The Lord Chancellor, the Rt. Hon. Viscount Jowitt, will open the new Institute of Advanced Legal Studies of the University of London on Friday, 11th June, 1948, at 4.45 p.m., in the Beveridge Hall, Senate House, W.C.1. The Rt. Hon. Lord Macmillan, G.C.V.O., Chairman of the Management Committee, will preside. Admission is free, without ticket.

Wills and Bequests

Mr. A. L. Collins, solicitor, of Duke Street, Grosvenor Square, left £35,750, with net personalty £35,161. He left £100 each to his secretary, managing clerk and cashier.

Mr. J. H. Hallsworth, retired solicitor, formerly Town Clerk of Oldham, left £34,956, with net personalty £33,857. He left £250 to the corporation of Oldham for the purchase of a picture or pictures for the art gallery, as a memento of his term of office as town clerk, and £1,000 to the N.S.P.C.C.

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey *Witness*	Mr. Justice Roxburgh *Non-Witness*
Mon., June 7	Mr. Jones	Mr. Blaker	Mr. Blaker	Mr. Farr
Tues., ,, 8	Reader	Andrews	Andrews	Blaker
Wed., ,, 9	Hay	Jones	Jones	Andrews
Thurs., ,, 10	Farr	Reader	Reader	Jones
Fri., ,, 11	Blaker	Hay	Hay	Reader
Sat., ,, 12	Andrews	Farr	Farr	Hay

Date	Group A Mr. Justice Wynn Parry *Business as listed*	Mr. Justice Romer *Business as listed*	Group B Mr. Justice Jenkins *Witness*	Mr. Justice Harman *Non-Witness*
Mon., June 7	Mr. Andrews	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 8	Jones	Farr	Reader	Hay
Wed., ,, 9	Reader	Blaker	Hay	Farr
Thurs. ,, 10	Hay	Andrews	Farr	Blaker
Fri. ,, 11	Farr	Jones	Blaker	Andrews
Sat. , 12	Blaker	Reader	Andrews	Jones

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